COURT NEWS

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Distinguished Service, Aranda, Kleps award winners—see pages 6, 8

2001: A Court Odyssey

Statewide Court Unification At Hand

The modern movement toward trial court unification—which was conceived in the 1950s, gathered steam in the 1970s, and was pursued in earnest in the 1990s—is nearly complete. With the certification of Monterey County's unification last month, California's courts entered the new year with just one county, Kings, still to decide whether to unify its municipal and superior courts.

Heralding the restructuring of trial courts statewide, a recent report commissioned by the Administrative Office of the Courts (AOC) confirms that many of the improvements in court operations that were anticipated results of unification have come to pass. Analysis of Trial Court Unification in California, *the first study conducted since California voters approved Proposition 220 (the constitutional amendment authorizing trial court unification) in 1998, details the positive impacts of unification on the communities served by the trial courts.*

In November, Monterey County judges voted to unify the county's superior and municipal courts, making Monterey the 57th of 58 counties to approve the unification of the trial courts. In December, the U.S. Department of Justice granted preclearance to Kings County to implement Proposition 220, clearing the way for it to unify its superior and municipal courts if the majority of judges in each court votes to do so. (At press time, a vote had yet to be scheduled.)

"Since voter approval of the amendment, unification has achieved its goals and more," says Administrative Director of the Courts William C. Vickrey. "We in California are ahead of even the most optimistic predictions on making good on the promises of unification."

Mr. Vickrey also comments that he has received many letters from presiding judges and others around the state attesting to the efficiencies that unification has afforded their courts. Former legislator and current Superior Court of San Mateo County Judge Quentin L. Kopp wrote to Mr. Vickrey to say that "no legislative action he'd seen in his 12 years in the state senate resulted in such cost savings for California as court unification."

"Presiding Judge Wayne Peterson [of the Superior Court of San Diego] reported immediate savings of more than $1 million and the ability to increase resources to the family and juvenile departments," says Chief Justice Ronald M. George. "Santa Clara County's Presiding Judge Jack Komar said that due to unification his court was able to establish a new domestic violence court and that it reduced the pending criminal caseload from more than 1,000 to approximately 450."

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The Superior Court of Monterey County officially approved the unification of its superior and municipal courts on November 30, 2000, making it the 57th of 58 counties to unify the trial courts. Judge John M. Phillips (at podium) received recognition for his work, from 1998 to 2000, as presiding judge of the formerly coordinated Monterey County trial courts. (From left) Chief Justice Ronald M. George, Senator Bruce McPherson, Superior Court of Monterey County Presiding Judge Robert A. O'Farrell, Administrative Director of the Courts William C. Vickrey, and Chief Deputy Director of the Courts Ronald G. Overholt. *Photo: Courtesy of the Superior Court of Monterey County*

IN THIS ISSUE

Case Statistics on JBSIS

Case statistics for the trial courts are now literally at your fingertips. The Judicial Branch Statistical Information System (JBSIS) Web site now gives judicial branch employees access to court-related aggregate case statistics.

Replacing the 25-year-old manual data collection system, JBSIS stores data in a statistical "warehouse" accessible through Serranus, the California judicial branch's secured Web site. Previously, case-related data for the trial courts were available only upon request, on an ad hoc basis, through the Administrative Office of the Courts (AOC). Now judicial branch employees can formulate their own reports anytime on the site.

The new Web site, which was posted November 14, 2000, contains standard reports on areas of the law including appeals, civil, family, felony, juvenile delinquency, juvenile dependency, mental health, misdemeanors and infractions, probate, and small claims. Users can also formulate specific queries and can select one or more courts and/or time periods.

"Before JBSIS, the judicial branch faced a great challenge in communicating the volume and complexity of its caseload," says Pat Yerian, Director of the Information Services Division of the AOC. "Trial courts need these data to develop budgets, determine staffing and judgeship needs, support requests for funding, and evaluate new programs."

DEVELOPMENT OF JBSIS

The Judicial Council's Court Executives Advisory Committee formed a JBSIS subcommittee in January 1996 with the goal of providing judicial branch decision-makers with access to comprehensive case-related statistics. The subcommittee's aims were to (1) automate data collection and reporting by creating statewide standards and (2) involve trial court staff in the development and implementation processes.

To achieve these aims, the subcommittee formed nine JBSIS work groups organized by case type. The work groups were made up of a total of 100 trial court employees. After developing draft data standards, the subcommittee circulated them to the courts for comment. It also presented the standards to appropriate council advisory committees. In 1998 the council adopted rule 996 of the California Rules of Court, which set forth the JBSIS standards and the policies to guide implementation. A key provision of rule 996 stipulates that the trial courts must implement JBSIS, subject to the availability of funding, by January 1, 2001.

JBSIS implementation has been delayed because of a lack of funding for required modifications to case management systems. However, in fiscal year 2000–2001 the AOC received $22 million to help trial courts implement JBSIS standards. These funds can be expended over three fiscal years (through June 30, 2003).

In September 2000, to assist in the implementation process, the AOC formed the JBSIS Project Team, composed of volunteers representing the four regional trial court technology groups. This team is overseeing implementation and developing a process for soliciting additional funding requests for JBSIS projects.

ACCESS TO JBSIS DATA

The JBSIS data warehouse contains case information reported manually by the trial courts

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Chief Justice Ronald M. George

MESSAGE FROM THE CHIEF JUSTICE

The First Amendment and the Courts

On October 14, 2000, Chief Justice Ronald M. George spoke before the California First Amendment Assembly at California State University, Fullerton. He discussed the First Amendment in relation to court opinions, public disclosure, and electronic access to information. Following is an excerpt from that address.

The intertwining of First Amendment values and the administration of justice raises complex and challenging questions. Courts often must make difficult decisions about what information is released and when that will occur. They must balance a variety of interests that typically include the application of constitutional protections and rights as well as the role of ethical restrictions and privacy concerns. At the same time, courts must be sensitive to the public's right to know and wary of treating everything that passes through the courthouse doors as confidential. . . .

COMMENTS ON COURT OPINIONS

Courts and the press often appear to have an uncomfortable relationship. Judges are accustomed to refusing to answer questions about their official acts. Instead, they typically refer to the action they have taken or the decision they have issued by explaining that it speaks for itself. This approach comports with the Code of Judicial Ethics, which precludes a judge from making any public comment about a pending or impending proceeding in any court, or any nonpublic comment that might substantially interfere with a fair hearing—with an exception being provided for specified educational uses.

A single case may involve multiple, different court proceedings. Asking a judge to comment on a particular ruling can have an impact on how the case proceeds. A written opinion may be required for a specific purpose—to provide information about the facts and the authority upon which the court relied and to memorialize the court's analysis, reasoning, and conclusion.

The written opinion rendered by an appellate court of three, five, seven, or nine justices is, of course, not always automatically blessed with complete clarity. Differing interpretations of the written word are the meat and drink of commentators and academics, and provide the arguments for the next case down the line. Nonetheless, relying on the written text as the final word draws perimeters around the debate and gives finality to decision making for the individual litigants. Expecting a judge to explain what was really meant by a decision or elaborate on why a particular turn of phrase was used or a specific precedent was emphasized would add a gloss that would undermine finality, make appellate review difficult, and generally further increase confusion and debate. . . .

COURTS' RULINGS SUPPORT DISCLOSURE

As I observed, the press is extremely influential in shaping public opinion, and this is a grave responsibility that I know each of you takes very seriously. But there also is a burden on the courts in this arena. They must make available that which rightfully can and should be released to the public and the press. And that is a responsibility that California's court system has been taking very much to heart for the past several years. Courts cannot sit tight, claiming to be misunderstood and abused, if in turn they do not take the actions they should.

California's courts affirmatively have been taking steps that can make the difference. The results are reflected in opinions, rules, and practices that have all contributed to expanding public and press access to information about the court system. For example, the 1994 opinion in *Adams v. Commission on Judicial Performance,* which I authored for the Supreme Court, upheld the Commission on Judicial Performance's order that opened hearings following the filing of formal charges against a judge alleging conduct involving moral turpitude. We further concluded that a rule authorizing a single open hearing was permissible even if only some, but not all, of the charges involved moral turpitude. We observed that doing so "effectuates the purpose of the constitutional amendment by diminishing the risk of public skepticism that might result if only a segment of the charges brought against a judge in a particular case were dealt with in an open hearing." Further amendments to the Constitution have broadened the open hearing requirements, permitting the public more access to information once judges are charged formally with misconduct.

Another recent case in the California Supreme Court involved the right of the press and the public to be present at all proceedings in a civil trial. The United States Supreme Court previously had recognized these rights in criminal proceedings, but there was little authority nationwide in the civil area. Interpreting applicable statutory and constitutional provisions, the opinion I authored for a unanimous California Supreme Court in *NBC Subsidiary v. Superior Court* confirmed that a similar right applies in civil matters as well. Only if there is an articulable "overriding interest" will closure be permitted.

The decision in *NBC* was followed by the Judicial Council's proposal of new rules explicitly recognizing the public's interest in access to court records and affirming that, "unless confidentiality is required by statute or rule, court records are presumed to be open. . . ."

Another proposed new rule was circulated recently in response to an Assembly bill requiring the Judicial Council to adopt a rule concerning public access to budget and management information. The council has expedited development of draft rules so that they can become effective at the same time as the legislation. These rules specifically target budget and management information at the state and local levels. . . .

ELECTRONIC ACCESS TO INFORMATION

Speaking of Web sites, an area in which I disclaim any expertise, I *can* tell you that California has an award-winning site. On it, Supreme Court opinions are posted immediately—within 20 seconds of hard copies being available at the clerk's counter. We have set two weekly filing times at the Supreme Court—10 a.m. on Mondays and Thursdays—and provide information about expected filings shortly before their release so that reporters need not guess when particular decisions will be filed. We also provide press notification of "special filings" and high-profile cases, and early notice of cases that likely will be heard at the court's weekly conference at which it decides in which cases to grant review. The "action taken" list is posted on the Web site within 24 hours after the conference concludes.

The Web site includes a great deal more information about the entire state judicial system and the Supreme Court, including draft rules circulated for comment by the Judicial Council; official forms promulgated by the council; links to related Web sites; descriptions of the council, the Administrative Office of the Courts, and the appellate courts; and much more.

This year, our appellate courts also launched a new service through the Internet that permits litigants, attorneys, the press, and the public to retrieve up-to-date case status information for all six of the courts of appeal. The Supreme Court, which has been installing a new case management system, will follow soon with its own online case information system.

The Judicial Council is studying access to electronic trial court records, as well. Recent legislation concerning electronic filing included a component setting January 1, 2003, as the date by which the council should adopt not only uniform rules for electronic filing but also policies concerning access to records. The council's Court Technology Advisory Committee is working on a second round of proposals that first will be circulated within the court community and then will be presented to the council for its circulation for public comment. The committee is working with a consultant to study state and federal laws—looking for models that have developed in this area—and it appears that California, in fact, is well ahead of the curve in focusing on this subject. . . .

As you can see, there are many points of intersection between the press and the courts, involving the extent and application of the First Amendment and the role and functions of the judiciary. It is to the benefit of all of us, in my view, to open the courts' processes and functions as widely as possible and to as large an audience as can be reached.

Judicial Council Action

Council Approves Development of SJO Rules

At its December 15 meeting, the Judicial Council approved the creation of rules that will offer guidance to the state's trial courts about the role of subordinate judicial officers (SJOs). The council's actions address the growing use of SJOs combined with changes in the judicial system brought about by trial court unification and statewide trial court funding.

SJOs—commissioners, referees, and hearing officers who assist trial courts with their caseloads—make up 22 percent of the judicial workforce.

At its meeting, the council:

❑ Approved development of a new court rule that would recognize that SJOs are a valuable part of the court system and that their primary role should be to perform subordinate judicial duties.

❑ Approved development of a new court rule that would establish a policy that an SJO may appropriately sit as a temporary judge (where lawful) if his or her presiding judge determines that, because of a shortage of judges, this is necessary for the effective administration of justice.

❑ Approved the development of a new court rule that would set minimum qualifications and training standards for SJOs. The council is developing these rules in accordance with the Trial Court Employment Protection and Governance Act, which took effect January 1, 2001.

❑ Approved the creation of a working group to study the implementation of new policies and rules of court on SJOs. The working group will comprise judges, SJOs, bar members, and representatives of the council's advisory committees.

❑ Directed that methods for acquiring, training, and retaining judges with an interest in family and juvenile law be developed by the council's Trial Court Presiding Judges Advisory Committee and Family and Juvenile Law Advisory Committee.

❑ Approved the development of legislation that would provide for the conversion of some of the vacant SJO positions to judgeships.

❑ Approved a policy that no SJO shall lose his or her employment solely as a result of any of the above policies, rules, or proposed legislation.

In addition, the council approved an interim policy that provides that, for any SJO position requested after January 1, 2001, the courts must apply to the Judicial Council through the Administrative Office of the Courts (AOC). The request must document the court's overall SJO workload and the workload justifying the new position. The court must also document the availability of existing funding within its current budget to support the position and its associated costs.

OTHER ACTIONS

In other actions, the Judicial Council:

❑ Adopted two new rules of court, effective January 1, 2001, regarding the role and responsibilities of the Judicial Council's Litigation Management Committee and the management of all claims and lawsuits affecting the trial courts. In addition, the council amended the litigation management policies it had adopted in December 1999. Under recently enacted legislation, the council is responsible for providing representation, defense, and indemnification of judges, subordinate judicial officers, executive officers, and employees of the trial courts. Guidelines on implementing the new rules are forthcoming from the AOC's Office of the General Counsel.

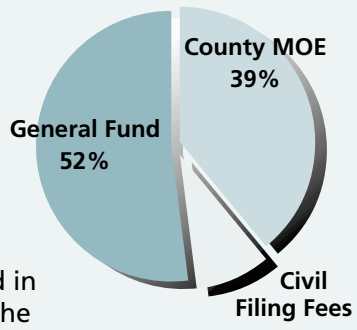
❑ Voted to sponsor legislation to create 30 new judgeships in 14 trial court systems. The judgeships are a result of the Judicial Council's long-standing commitment to bring much-needed judicial resources to the state's trial courts and are based on the recommendations of the former Court Profiles Advisory Committee.

❑ Approved a recommendation to sponsor legislation (related to the Trial Court Funding Act of 1997) that would make changes in the organizational and financial arrangements between the Judicial Council, trial courts, counties, and other state agencies. ■

Year-End Financial Report Shows Surplus

At its December 15 business meeting, the Judicial Council approved a year-end financial report for fiscal year 1999–2000, the second full year of statewide funding for the courts. Trial court revenues and transfers outpaced expenditures, resulting in a positive balance. In regard to the Trial Court Trust Fund, which is the primary source of funding for the trial courts, the report showed that actual trial court revenues and transfers of $1.723 billion were $2.2 million higher than budgeted, and trial court expenditures of $1.723 billion were $2.5 million lower than estimated. This resulted in a balance of $5.8 million in the Trial Court Trust Fund.

Sources of Revenue For Trial Courts



"This is a prudent balance to have available as a reserve for changes in revenue or contingencies in court operations," says Frank Schultz, Manager of the Budget Development Unit in the Finance Division of the Administrative Office of the Courts. "These results are another example of the strides the courts have made under statewide funding. Improved budgeting and accounting processes and procedures in place for the current fiscal year promise even better financial information in 2001."

Governor Announces Proposed Budget

On January 10, Governor Gray Davis released his proposed budget for fiscal year 2001–2002. A few of the elements of the proposed budget that affect the courts are funds for:

❑ Additional court security personnel and equipment;

❑ Continued implementation of one-day/one-trial jury service programs;

❑ An increased court interpreter caseload; and

❑ Additional staffing and resources in family trial court programs.

Although the budget does not address certain items, such as one-time technology requests and areas involving significant increases in staffing, it does respond to a great number of foundational issues, including areas in which courts are mandated to pay for expenses such as services provided by counties.

"We thank the Governor for providing funding for the judicial branch initiatives that are included in his budget," says Chief Justice Ronald M. George. "We did not expect that all of our proposals would be included in the Governor's initial budget this month, because of the uncertainty of the state's revenues and the need to allocate resources for the energy crisis. We are optimistic, however, that many of our other proposals will be included in the Governor's budget as revised in May."

The proposed budget will be reviewed by legislative fiscal committees, and a revised version is expected from Governor Davis in May.

L.A. County Establishes Homeless Court

In an effort to reach out to the area's homeless residents who want to re-enter mainstream society, the Superior Court of Los Angeles County has established a monthly Homeless Court at the Union Rescue Mission in downtown Los Angeles. The superior court developed the program in collaboration with public counsel and the Pepperdine University Legal Aid Clinic.

"This is court outreach," says Superior Court of Los Angeles County Judge Michael Tynan, who presided over the Homeless Court's inaugural session on November 20, 2000. "We're going to where these folks live to give a helping hand to get them back on their feet."

The Homeless Court is designed to hear "quality-of-life" infractions such as unauthorized removal of a shopping cart, disorderly conduct, public drunkenness, public urination, and sleeping on a sidewalk. It is intended as a vehicle for homeless residents to clear their records of outstanding warrants and misdemeanor charges so that they can re-enter the job market.

The court is not for every offender but is aimed specifically at individuals who want to get off the streets and find gainful employment. In all 10 of the cases over which Judge Tynan presided on the opening day of the court, the defendants had completed at least six months in a homeless rehabilitation program and were accompanied by the program's representatives, who vouched for their efforts to reintegrate into the community.

"To the homeless, the court system is a horrible maze they feel like they can't get out of," says Superior Court of Los Angeles County Judge Victor E. Chavez. The idea of the Homeless Court is to not only help the homeless but reduce vagrancy, "so this court will benefit the entire community."

ORIGINS OF HOMELESS COURT

The Los Angeles County Homeless Court was modeled after San Diego County's program, which similarly handles quality-of-life infractions. "It's especially gratifying that those traditionally wary of the justice system are now willing to come to us to get a fresh start," says Superior Court of San Diego County Presiding Judge Wayne L. Peterson. "They have seen us help others and are now taking that first step themselves."

Begun in 1988 at an event to assist homeless veterans, San Diego County's program is now held monthly, alternating between the St. Vincent de Paul Society homeless shelter and a hotel renovated by homeless Vietnam veterans. In deals worked out in advance between the city prosecutor and the public defender, defendants are given credit for having entered a shelter, done volunteer work, or enrolled in Alcoholics Anonymous or other self-help programs.

"The advance counseling is a bonus," says the court's trial setting supervisor, Julia Zolot. "The defendant already knows what will happen, so the judge can spend more time discussing the person's situation. It's more personal."

San Diego County's program is financed through a federal grant obtained by Public Defender Steve Binder. Modeled after San Diego's program, the Superior Courts of Alameda and Ventura Counties have also begun holding homeless courts.

● For more information, contact Jerrianne Hayslett, Public Information Officer, Superior Court of Los Angeles County, 213-974-5227, or Marilyn Laurence, Public Affairs Director, Superior Court of San Diego County, 619-531-4484. ■